

THE ORANGE COUNTY REGISTER

Editorial: Awaiting answer on drones

Does administration claim it can kill on U.S. soil?

February 27, 2013

A major benefit of the U.S. Constitution is that it limits the federal government to 17 "enumerated powers," as Supreme Court Chief Justice John Marshall called them. The powers are listed in Article I, Section 8; and "enumerated," obviously, means not infinite.

Unfortunately, presidents over the years have stretched the meaning of "enumerated." Since the Sept. 11, 2001, attacks, both President George W. Bush and President Barack Obama have expanded presidential war powers.

This is manifested in the U.S. Senate confirmation struggle over John O. Brennan, the president's nominee to become the director of the Central Intelligence Agency. Mr. Brennan has continued Mr. Obama's policy of stonewalling on whether the government could employ missile-firing unmanned aircraft to kill, without trial, U.S. citizens on American soil.

In drone attacks, directed, so far, at suspected terrorists in foreign countries, the president, advised by his aides, effectively is judge, jury and executioner. Sen. Dianne Feinstein, D-Calif., chairman of the Senate Select Committee on Intelligence, brought up a key question. She asked Mr. Brennan whether any president could, by his authority alone, attack Americans here at home. Mr. Brennan replied that President Obama "has not carried out" such attacks and "has no intention of doing so."

In a Feb. 20 letter to Mr. Brennan, Sen. Rand Paul, R-Ky., wrote, "The question that I and many others have asked is not whether the administration has or intends to carry out drone strikes inside the United States, but whether it believes it has the authority to do so. This is an important distinction that should not be ignored." After all, intentions can change, by Mr. Obama or a successor.

"That amount of authority should not be invested in the president alone," Benjamin H. Friedman told us; he's a research fellow in defense and homeland security studies at the libertarian Cato Institute. He said that the American Revolution was fought to end the arbitrary executive authority of King George III.

NBC News this month revealed a confidential Justice Department memo contending that targeted killings, including those of American citizens, can be undertaken even if the government does not "have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future," in the memo's words.

Mr. Friedman said, "It's endless authority that's being claimed, which ought to be disturbing to people."

What Congress needs to do, Mr. Friedman said, is to reassert its own authority by "legislating to define the boundaries of the war against al-Qaida," the terrorist group. "It should be specific about which country and group" would be considered enemies. Congress also should consider a special court to approve targets for killing, so at least those lethal decisions are being made by more than a single person. Mr. Friedman also said such a court could be dangerous if it's only a partial measure to check presidential power.

He also said potential victims of the strikes, or the families of the dead, might be given recourse to the courts to attempt to prove the target's innocence.

On American soil, it seems obvious to us that the president and Mr. Brennan should confirm that such killings are illegal. Otherwise, the government eventually could arbitrarily kill even suspected common criminals. If Mr. Brennan does not answer that question adequately, his nomination should be rejected by the Senate.